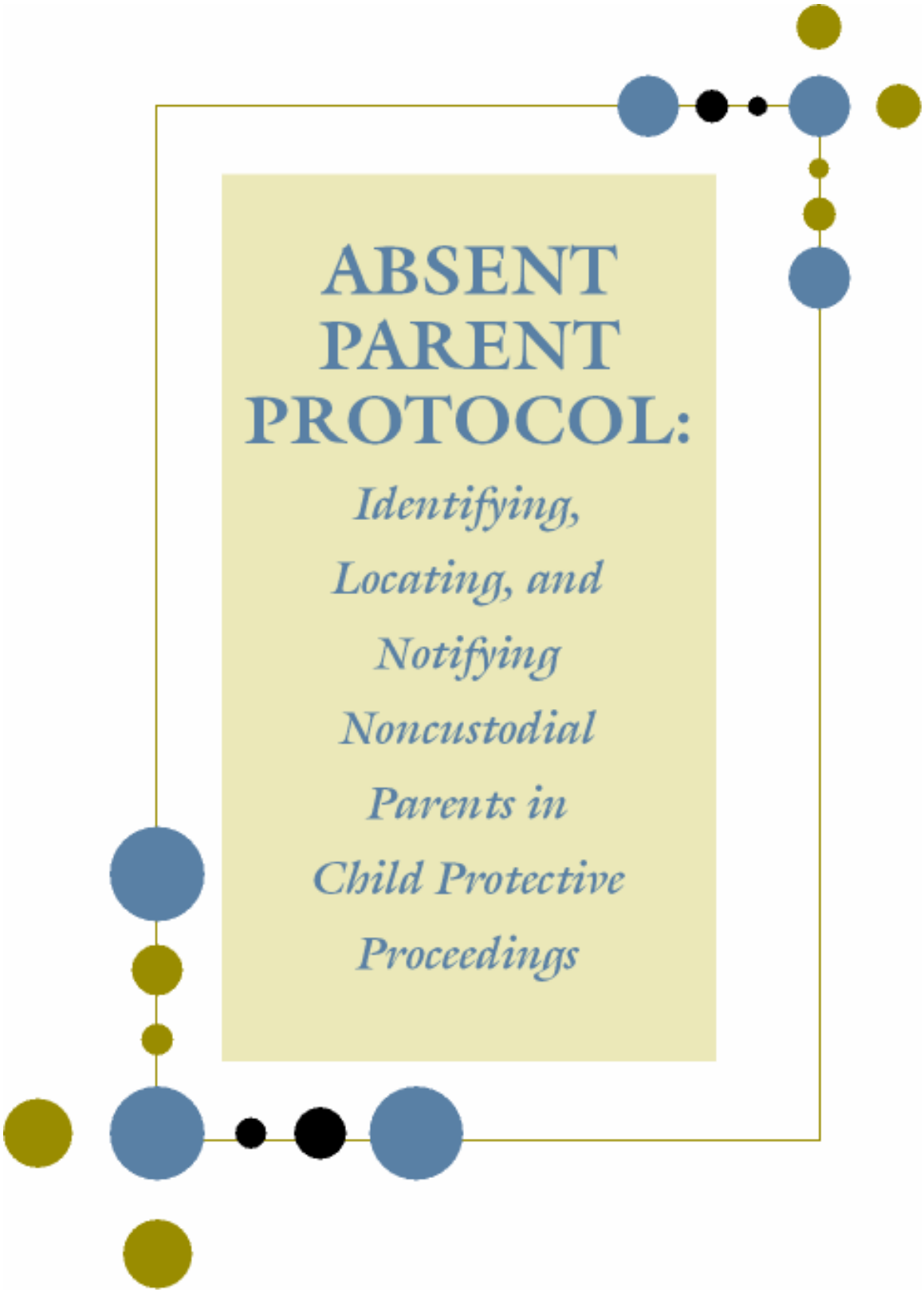
October 2005

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 5

Notice & Time Requirements

The State Court Administrative Office has revised the Absent Parent Protocol. After Section 5.13, which ends on page 164, replace the Absent Parent Protocol with the following revised edition:



ABSENT PARENT PROTOCOL:

Identifying, Locating, and Notifying Noncustodial Parents in Child Protective Proceedings

Absent Parent Protocol
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ABSENT PARENT PROTOCOL:
Identifying, Locating, and Notifying Noncustodial Parents in Child Protective Proceedings

INTRODUCTION

The Absent Parent Protocol was developed as a resource for the people responsible for identifying, locating and, if appropriate, involving absent parents in child protective proceedings. The goal is to address the absent parent issue as early as possible and, as necessary, at each stage of a child protective case to prevent disruption of the permanency plan later in the case.

This protocol was developed in response to problems that arose when absent parents were not involved early in the process.

- Permanency plans were disrupted when an absent parent was not identified or located early on, and that parent sought to participate long after the direction of the case was established.
- Court proceedings were unnecessarily delayed or made more complicated when absent parents were involved at a late point in the case.
- Placement of the child with the absent parent or his/her family was eliminated as a possibility when the absent parent was not identified or located.

These concerns, and others, were raised in several forums identifying the barriers to permanency. The Children's Task Force of the State Bar of Michigan, the Kent County Families for Kids Initiative, and annual reports of the Foster Care Review Board have all raised absent parent issues as a key obstacle to permanency. The issues were also discussed in the assessment phase of the State Court Administrative Office's Court Improvement Project, in which absent parent issues emerged as one of the top three barriers to achieving permanency for children. In response, the State Court Administrative Office began developing a protocol to identify absent parents and include them in the process as early as possible. Most recently, the matter of absent parents was raised in the federal Child and Family Services Review. Michigan's Child and Family Services Review Program Improvement Plan includes this protocol as part of its response in addressing the absent parent issues.

The Absent Parent Protocol is a result of recommendations from an independent assessment of child protective court proceedings. It was developed in response to a broad-based consensus that failure to appropriately handle absent parent matters has been a barrier to a timely permanent placement for too many children. Although the protocol does not carry the weight of law, it does discuss a variety of activities that are statutorily required and mandated by court rule. This protocol should therefore be treated as recommendations for best practices.

Four interrelated themes guided the development of this protocol.

1. **The courts must take leadership to ensure that efforts to locate and involve absent parents begin at the earliest stages of a child protective proceeding.** The role of the court is essential to a successfully implemented local protocol. In addition, activities to locate absent parents can be locally institutionalized by integrating the issue into local procedures.

2. **Protocol elements must be sensitive to current workload and responsibilities.** This protocol is designed to provide approaches that are effective but not burdensome, and serve as a best practices resource.

3. **The protocol must take full advantage of new technologies.** New and enhanced access to databases and other information sources can greatly facilitate the search for absent parents.

4. **The protocol will only be successfully implemented with the "buy in" of local leadership.** The intent of this protocol is to provide useful, efficient tools for locating and involving absent parents. Successful local implementation, however, will require changing local practice in building new relationships and expanding efforts to find absent parents. Ultimately, the local court, the Department of Human Services, and other stakeholders must agree that children involved in child protective proceedings deserve permanency, and that implementing the Absent Parent Protocol is a key way to achieve earlier dispositions and greater permanency.

Section I: IDENTIFYING A CHILD'S FATHER

A. **Legal Father:** In a child protective proceeding, a child's parents are his or her mother, his or her father, as defined by law, or both. It is important to distinguish between a father who has rights recognized by law and a man claiming to be a father who does not have such rights. A man who has legally-recognized rights is called a "legal father." To be a legal father, a man must fit into one of the following categories:

1. A man who is married to the child's mother at any time from the child's conception to the child's birth.

2. A man who has legally adopted the child.

3. A man who has been determined to be the child's legal father in an order of filiation or judgment of paternity as a result of an action under the Paternity Act.

4. A man who has been determined by a judge in a divorce action to have parental rights.

5. A man who has been determined to be a child's legal father by the proper filing of an acknowledgment of parentage.

Note: See Appendix 1 for a fuller discussion of each of these ways that a man can be legally established as a father.

B. **Putative Father**: A "putative father" is an alleged biological father of a child. A putative father can only exist where a child has no legal father, and has no legal rights unless and until he legally acknowledges paternity of the child. If a legal father exists, a putative father may not be identified or participate in a child protective proceeding unless the presumption of a child's legitimacy is rebutted (see Appendix 1). If no legal father exists, a court may conduct a "putative father hearing" to identify the alleged father, facilitate notification of the alleged father, and allow him to legally establish his paternity of the child.

If a child's mother is married at the time of birth, the mother's husband must be identified as the father on the child's birth certificate. If a child's mother is unmarried at the time of birth, a father's name may not be placed on the child's birth certificate without the completion and filing of an acknowledgment of parentage or a court order following a paternity action.

Section II: EARLY ATTENTION TO THE ABSENT PARENT ISSUE

A. Involvement of Child Protective Services and Foster Care

The Department of Human Services and private agency staff must begin to identify, locate, and involve an absent parent at the earliest stages of child protective proceedings.

Early efforts to involve an absent parent can ensure the issue is addressed in the petition and can facilitate cooperative and coordinated efforts among staff from Child Protective Services, Department of Human Services foster care, and private agency foster care.

During the early stages of a child protective proceeding, both foster care and Child Protective Services may be involved. Child Protective Services staff is responsible for the legal aspects of the case and stays involved through the adjudication phase. In many jurisdictions, foster care staff will begin to take on the social work role at the preliminary hearing or shortly thereafter. As a result, during the time between the preliminary hearing and the adjudication of the case, both foster care and Child Protective Services staff can be actively seeking an absent parent.

The amount of information that foster care or Child Protective Services staff has regarding absent parents will vary depending upon the case. In many counties, Child Protective Services has placed a high value on providing services and interventions for low- and moderate-risk families. In these cases, because of their prior involvement with the family, Child Protective Services staff is more likely to have information regarding an absent parent. In more egregious cases where a petition is filed immediately, Child Protective Services' involvement is limited to investigation and substantiation.

B. Minimum Requirements for Identifying and Locating an Absent Parent

Child Protective Services, foster care, and private agency workers have specific duties concerning the identification and location of absent parents that vary depending upon the circumstances of the case. However, in all cases the absent parent issue should be addressed from the onset. At a minimum, Child Protective Services should ask the parent with whom they have contact about the identity and whereabouts of the absent parent, and be prepared to discuss the issue at the preliminary hearing. Because the case responsibilities begin to transition from Child Protective Services to foster care after the preliminary hearing but before the adjudication, local Child Protective Services and foster care staffs will need to develop a process to assure continued diligent efforts to find absent parents.

1. Diligent Search

A diligent search will include interviewing the child's custodial parent and other relatives, checking telephone and other directories, and initiating a search through the local friend of the court or the Department of Human Services' Office of Child Support. (See Section IV: Resources for Office of Child Support Information.) If the efforts fail to reveal an absent parent's identity or location, an *Affidavit of Efforts to Locate Absent Parent* (JC 83) should be completed prior to the time when notice is required for an upcoming trial. This affidavit outlines the efforts made to identify and locate the absent parent, and is submitted to the court along with a *Motion for Alternate Service of Process* (JC 46) on the absent parent.

The Department of Human Services' policy requires a foster care worker to:

- determine whether the mother was married at the time of conception or birth by talking with the mother and relatives,
- determine whether the parents are divorced and, if so, whether either parent is paying child support,
- review the child's birth certificate to see if a father is listed,
- contact the friend of the court or the Central Functions Unit within the Office of Child Support to determine whether anyone has been paying child support,
- contact the family division of the circuit court to determine whether an order of filiation has been entered, and
- contact the probate court to determine whether an affidavit of parentage has been filed.[1]

Other ways to locate an absent parent include: conducting a statewide Client Information System inquiry and a Secretary of State inquiry, searching telephone books and U.S. Post Office addresses, conducting a friend of the court inquiry, checking with the county clerk's office for vital statistics, contacting the absent parent's last place of employment, following up on leads provided by friends and relatives, and seeking legal publication. A

[1] Acknowledgements of parentage are required to be filed with the state registrar. Subsequent proceedings on the acknowledgement are proper in the circuit court.

foster care worker may use the Federal Parent Locator Service if he or she knows the absent parent's social security number; the Department of Human Service's "Free Parent Locator Services" at http://www.michigan.gov/fia/0,1607,7-124-5453_5528_6741---,00.html; and the Michigan Department of Corrections "Offender Tracking Information System" at http://www.michigan.gov/corrections/0,1607,7-119-1409---,00.html.

2. Paternity Testing

Child Protective Services and foster care staff have access to free paternity testing as follows:

a. Paternity Testing Through the Office of Child Support

The Office of Child Support will provide paternity testing services if foster care staff makes a referral to the Office of Child Support for the purpose of establishing paternity and/or a support order. The court may order the foster care worker to make a referral to the Office of Child Support. There are two advantages to requesting paternity testing through the Office of Child Support:

- ninety percent (90%) of the cost for testing is paid through federal reimbursement with the remaining 10% paid through county funds, and
- more than one test can be requested.

To access paternity testing a referral is made to the Office of Child Support using Form DHS-3205. Paternity testing will be available for cases in which the mother/father status code is either 05 or 06 on the Medicaid case.

Note: These services are not available in cases where the court orders paternity testing without an Office of Child Support referral. There must be a Title IV-D case to access federal funding for testing.

b. Paternity Testing Through the Department of Human Services Contract Services

An agreement has been established for paternity genetic testing services through Orchid Cellmark, with all costs paid by the Department of Human Services Central Office. To arrange an appointment for parentage testing/specimen collection, workers should contact Orchid Cellmark directly by phone (800-443-2383) or FAX (937-294-3385). Key factors to remember:

- the service is not to establish child support,
- the service is available one time per client,
- workers requesting this service must ensure that previous test results are not available through other sources such as the Office of Child Support or the friend of the court, and
- pictured identification and social security numbers for parents and children are required at the time of the appointment.

For more information, refer to the Department of Human Services L-letter 99-084 (or subsequent L-letters on the topic).

Note: Private agency foster care workers should consult with their Department of Human Services contract manager for guidance on how to access this service.

C. Sharing Information

If Child Protective Services staff has been unable to identify the absent parent prior to filing the petition, any relevant information should be provided to the assigned foster care worker, including:

- Any efforts to locate the absent parent that are pending at the time of the transfer.
- Any efforts that may benefit from continued attention. For instance, since Child Protective Services has likely been involved in removing the child from the home, the relationship with the custodial parent may not be conducive to sharing information. A foster care worker may be able to create a more positive relationship and elicit more useful information.

Because of the different people potentially involved in efforts to locate absent parents, it is vital that information be shared in a timely manner. This includes good communication between Child Protective Services and foster care staff. Protocols must be established between the Department of Human Services and private agencies to ensure that foster care staff have access to the resources available for finding absent parents and for establishing paternity.

Note: Private agency foster care staff will need to access the services of the Office of Child Support through their contract monitor with the Department Of Human Services.

D. Petitions

A petition must identify both legal parents or identify a father as a putative father. **Failure to ensure that a parent is named as a respondent when it is appropriate to do so is a frequent reason for permanency delays.**

If a legal father exists, only the legal father may be named as a respondent in a petition requesting termination of parental rights. If a father's identity is unknown, it should be stated in the petition. In most cases, if the absent legal parent is not involved in the child's life, has not sought custody of the child, and there is no indication that the absent parent intends to provide for the proper care and custody of the child, the court may assume jurisdiction and the absent parent's parental rights may be terminated for desertion or failure to provide proper care or custody.

If appropriate, allegations of desertion or child neglect by an identified father should be included in the original or an amended petition. The allegations against the absent parent do not have to be the same as those that brought the parent with custody to the attention of the court.

Including the absent parent as a respondent in the original petition, if appropriate, or amending the petition to include the absent parent when allegations surface later, can:

Preserve the Absent Parent's Right to a Jury Trial. A party to a child protective proceeding may demand that a jury decide whether the facts alleged in the petition bring the child within the court's jurisdiction. The demand for a jury trial must be filed no later than 21 days before trial, unless the court excuses a later filing in the interests of justice. However, once jurisdiction over a child has been established through one parent's plea or at a trial of allegations against one parent, another parent has no right to demand a jury trial of allegations against him or her. Therefore, an absent parent's right to a jury trial depends on being identified and notified prior to adjudication.

Resolve Evidentiary Issues: Legally admissible evidence is not required where parental rights are terminated in a typical child protective proceeding and termination is sought under a supplemental petition after the parent or parents have had an opportunity to improve their parenting ability. However, if an absent parent is not named as a respondent before termination of parental rights is requested, and the allegations against the absent parent are new or different from those allowing the court to take jurisdiction, then legally admissible evidence must be used to establish a legal basis for termination of parental rights for the absent parent. While the absent

parent is rightfully entitled to such protection, the stricter evidentiary standards could preclude the admission of relevant information concerning the absent parent that would have been admissible if the absent parent had been named as a respondent in the action prior to adjudication.

Ensure the Absent Parent's Early Involvement in the Case Service Plan. Absent parents who may have an interest in creating a parental relationship with the child are much more likely to respond to legal notice of the proceedings and become involved in the case service plan early on. Therefore, it is important to include an absent parent as a respondent, if appropriate. In too many cases, absent parents seeking to assert their parental rights have emerged only after it has become apparent that the custodial parent will likely lose parental rights, which delays permanency for the child.

When amending a petition, Child Protective Services, foster care, and private agency staff must cooperate and share information regarding allegations against an absent parent.

E. Two Quick Resources for Locating Absent Parents

Federal Parent Locator Service (FPLS)

- FPLS is a good resource for an initial search and is available to foster care staff
- Having the social security number is extremely helpful when making the request
- FPLS requests can be made without opening a case for support
- To request FPLS, send an e-mail to FIA-OCS-CFU-Staff1@michigan.gov (include "Locate" in the subject line or, for urgent requests, "Locate-Urgent") or call 866-281-0031

Paternity and Payment Inquiries

The Office of Child Support can confirm whether paternity has been established for children involved in Child Protective Services investigations. The Central Functions Unit of the Office of Child Support will provide:

- paternity information,
- the last known address of the noncustodial parent,
- payment information on the court order, if one exists, and
- the progress of the Office of Child Support's efforts to locate and/or establish paternity.

Contact the Central Functions Unit at 866-281-0031

F. Checklist for Information Sharing and Communication

Petitions

- □ Is there a local process for exchanging information between foster care and Child Protective Services staff to:
  - □ Ensure the transition of responsibilities as a case moves from Child Protective Services to foster care?
  - □ Amend an original petition?
- □ Is there a lead person at Child Protective Services for this purpose?
- □ Do private agency staffs work through a Department of Human Services monitoring worker at the local Department of Human Services office, or can they contact Child Protective Services directly?
- □ Does the prosecutor's office (or other agency providing legal representation) assist in filing amended petitions?

Services

- □ Do private agency staff know key contacts at the local Department of Human Services to access services such as paternity testing and parent locating through the Office of Child Support?
- □ Has an appropriate protocol been established with the Office of Child Support so that:
  - □ The Department of Human Services and contract agency staff know who to contact to request a search?
  - □ Both the Department of Human Services and contract agency staff know that the Office of Child Support's progress can be tracked by calling the Central Functions Unit at (866) 281–0031?
  - □ The Department of Human Services and contract agency staff notify the Office of Child Support if a parent has been identified or located independently of the requested search?
- □ Do all parties involved in search efforts have an agreed upon local protocol for communicating results to the court, including, if appropriate, the filing of an amended petition?

Section III: COURT PROCEEDINGS

The court's leadership can significantly influence the effort to locate absent parents. A successful protocol for identifying, locating, and involving absent parents depends on a local system that requires attention to the issue at the earliest point and at every subsequent proceeding. Although locating absent parents is primarily the responsibility of non-court staff, the court lends credence to this effort by ensuring, as part of court review, that absent parents are aggressively pursued.

A. Raising the Issue of Paternity and the Identity and Location of an Absent Parent

1. Questioning the Custodial Parent

   If a child's absent parent has not been identified, the referee or judge who conducts a preliminary hearing must inquire of the child's custodial parent or anyone else present who has information regarding the identity and whereabouts of the child's absent parent. The court may place the parent who is present under oath and take testimony as to the identity and whereabouts of the absent parent. This approach can be useful when the court suspects that the parent who is present knows more about the absent parent's identity and location than he or she has been willing to admit. In these situations, Child Protective Services or foster care staff should be prepared to explain to the court why such testimony might be warranted.

2. Questioning the Petitioner

   It is an essential role for the presiding jurist to raise the absent parent issue at every child protective proceeding until the absent parent's identity or location is established. The court may ask the Child Protective Services or foster care worker the following questions, as appropriate:

   - Did you ask the available parent about the identity and whereabouts of the absent parent?
   - Have you contacted friends and relatives of both the available and the absent parent?
   - Did you check the telephone directory?

- Have you compiled complete information on the absent parent, such as:
  - Name?
  - Last-known address?
  - Phone numbers?
- Did you check the city directory? (if one exists)
- If none of the above was successful, have you explored other sources, such as:
  - Referral to the Office of Child Support to establish child support?
  - Contact with the local friend of the court or the Office of Child Support's Central Functions Unit to determine whether a support order exists?
- Did you look for other legal documents?
  - Is a father listed on the birth certificate?
  - Is an acknowledgment of parentage on file in the circuit court or with the State of Michigan?
  - Is an order of filiation or judgment of paternity on file with the circuit court?
  - If paternity has been established, was it verified by the Office of Child Support? *Note: The Office of Child Support is paperless; the support specialist workers have access to the Central Paternity Registry, but do not have access to certified copies.*
- If the child has no legal father, is a putative father hearing appropriate?
- If parentage is in question, is paternity testing in process or complete?
- If the absent/noncustodial parent has been identified, but not located, have you collected the following information and, if appropriate, included it in the petition?
  - Does the absent parent have a criminal history?
  - Does the absent parent have a Child Protective Services history?
  - Has the absent parent ever contributed to the financial support of the child(ren)?
  - Has the absent parent ever had custody of the child(ren)?
  - Have any of the absent parent's relatives ever been involved in caring for the child(ren)?
  - To what extent has the absent parent maintained contact with the child(ren) or otherwise shown interest?
  - Are there other factors that would indicate the absent parent's willingness and/or ability to care for the children?

B. Conducting a Serafin Hearing

If a child's mother was married at any time from conception to birth of a child involved in the proceedings, and if the mother or legal father alleges that the legal father is not the biological father of the child, the court must conduct a hearing to determine whether the presumption of the child's legitimacy has been rebutted by clear and convincing evidence. (This hearing is commonly called a "Serafin hearing" from the Michigan Supreme Court case that established the requirement. (*Serafin v Serafin*, 401 Mich 629 (1977)).

Note: See Appendix 2 for more information concerning when and under what circumstances a Serafin hearing is conducted.

C. Conducting a Putative Father Hearing

If a child has no legal father, and if the court has reason to believe that an identified person is the child's biological father, the court may take testimony to attempt to establish the identity and address of the child's alleged biological father. If the court finds probable cause to believe that an identifiable person is the child's biological father, the court must direct that notice be served on that person that a hearing is scheduled to determine his interest, if any, in the child.

The court must direct that notice be served on a putative father in any manner reasonably calculated to provide notice, including publication if his whereabouts remain unknown after diligent inquiry. However, a published notice must not contain the putative father's name. Notice by publication must be provided if the putative father's identity is unknown. The court rule also requires that the notice to the putative father contain the following information:

- If known, the name of the child, the name of the child's mother, and the date and place of birth of the child,
- That a petition was filed with the court,
- The time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor, and
- A statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and possible termination of any parental rights.

After directing notice to an identified or unidentified putative father, the court may make one of several findings. First, the court may determine that a putative father has been served in a

manner reasonably calculated to provide notice. The court may also determine by a preponderance of the evidence that the putative father is the child's biological father and allow him 14 days (or more for good cause shown) to establish legal paternity according to the definitions set forth in Section I, above. Alternatively, the court may find probable cause to believe that another identified man is the child's biological father and direct that notice be provided to that person as stated above. If an identified putative father fails to appear after proper notice or appears but fails to timely establish paternity, the court may find that he waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney. Finally, the court may determine that a diligent inquiry has been conducted and the identity of the child's biological father cannot be determined. If the court makes this finding, it may proceed without further notice and without appointing an attorney for the unidentified person.

Until a child's putative father has legally established his paternity of the child, a putative father is not entitled to receive notice of or participate in child protective proceedings, or to court-appointed counsel.

D. Requiring Amendments to Petition

The court should require counsel for the petitioner to add allegations against an absent parent by amended petition. While this protocol emphasizes inclusion of an absent parent as a respondent in an original petition, in some cases foster care or Child Protective Services staff will discover information about an absent parent that needs to be added in the form of an amended petition. When such amendments are made, the absent parent must be served with an amended petition and summons. If personal service cannot be achieved, service may be made by registered mail or publication, with the court's approval. The absent parent is then a respondent to the proceedings and under the jurisdiction of the court.

E. Ensuring Service of Process

1. Serving the Respondent

   Ensure that a summons is personally served on a respondent for an adjudicative hearing and, if held, a hearing on termination of parental rights. If the respondent is an absent parent, include:

- Summons: Order to Appear (Child Protective Proceedings) (JC 21)
- Petition (JC 04)
- Notice of Hearing (JC 45)

2. Serving the Noncustodial Legal Parent

   Notice for a noncustodial legal parent who is not a respondent is provided by personal service of the *Notice of Hearing* (JC 45) and a copy of the petition. If personal service cannot be achieved, the court may order service of process be made by mail or publication. In additional, the court may issue a summons requiring the appearance of anyone whose presence is found by the judge to be necessary. Therefore, in some cases a nonrespondent parent may receive a summons as well.

A summons to appear at a child protective proceeding clarifies the purpose of the proceeding, the party's rights, and the consequences for failure to appear.

In addition to the court providing the summons, the foster care worker should communicate to both the custodial and the noncustodial parents the importance of staying involved in court proceedings and complying with the case service plan.

3. If a Respondent or Noncustodial Legal Parent is Incarcerated

   If a respondent or noncustodial legal parent is incarcerated under the jurisdiction of the Department of Corrections, the petitioner must also comply with MCR 2.004. The petitioner must:

   - contact the Department of Corrections to confirm the incarceration and the incarcerated party's prison number and location,
   - serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served, and
   - file with the court the petition or motion seeking an order regarding the minor child stating that a party is incarcerated and providing the party's prison number and location. The caption of the petition or motion shall state that a telephonic hearing is required by this rule.

   The court must then issue an order requesting that the Department of Corrections, or a non-Department of Corrections facility where the respondent or parent is located, allow

the respondent or parent to participate in a hearing or conference via a non-collect and unmonitored telephone call. The court must serve the order on the parties and the warden or supervisor of the facility where the respondent or parent resides.

4. If Personal Service is Impracticable or Cannot be Achieved

If a summons cannot be personally served on a respondent, the court may order alternate service in any manner reasonably calculated to provide actual notice. To do so, the court must find on the basis of testimony, a motion and affidavit, or any other information that personal service is impracticable and cannot be achieved. Use SCAO-approved *Motion for Alternate Service* (JC 46) and *Order for Alternate Service* (JC 47) for this purpose

Diligent efforts to locate and personally serve an absent legal parent are required before asking the court to approve a motion for alternate service. A caseworker should use an *Affidavit of Efforts to Locate Absent Parent* (JC 83) when filing a motion for alternate service to demonstrate that diligent efforts were made to locate the absent parent. On the form, the caseworker will affirmatively state that diligent efforts have been made to locate an absent parent. In addition, it establishes a request for a search by the Office of Child Support as a "diligent efforts" standard when other activities prove unsuccessful.

5. Alternate Service

If a parent's whereabouts are known but personal service cannot be achieved, service may be made in "any manner reasonably calculated to give notice of the proceeding and an opportunity to be heard," including registered or certified mail addressed to the last known address. If a parent's whereabouts are unknown, the court may order service by publication. However, a court should not order service by publication or any other substituted service if the petitioner has not made reasonable efforts to locate the absent legal parent. A motion for alternate service must show that the substituted method of service is best suited to provide actual notice of the proceedings to the absent parent.

F. Ongoing Attention During the Dispositional Phase of Proceedings

This protocol is designed to promote early, intensive, and coordinated efforts for finding and, if appropriate, involving an absent parent in a child protective proceeding. In most cases these efforts will resolve the issue early in the process. However, in some situations, absent parent issues may linger beyond the adjudicatory phase of a child protective proceeding. In these cases, the judge or referee should raise the issue of an absent parent at each court proceeding after

adjudication so long as questions remain. Depending upon the circumstances, any of the following may be appropriate review questions.

- ***Identity and whereabouts are not known***

  What continued efforts have been made to identify and locate the absent parent?

- ***Identity is known but efforts to locate have not been successful***

  What continued efforts have been made to locate the absent parent?

- ***Identity is believed to be known, but parentage is being denied or is in question***

  What steps have been taken to determine parentage?

- ***Parentage has been determined since the last court hearing***

  What has been done to engage the absent parent involved in the child's life, or to establish that the parent has no interest?

G. New Information Discovered During the Dispositional Phase—Supplemental Petitions

If the agency responsible for a child's care and supervision becomes aware of additional abuse or neglect of a child who is under the jurisdiction of the court, and if that abuse or neglect is substantiated, the agency is required to file a supplemental petition with the court. If the supplemental petition does not request termination of parental rights, the court may address the petition at a review hearing or progress review. If the supplemental petition requests termination of parental rights, the court must conduct a hearing under MCR 3.977. In either case, the court is not required to redetermine its jurisdiction over a child, and a respondent to the new allegations in the supplemental petition is not entitled to a jury trial on those allegations. However, a respondent to the supplemental petition must be notified of a review hearing at which the new allegations will be addressed or, if termination of parental rights is requested, must be personally served with a summons and a copy of the supplemental petition.

H. Termination of Parental Rights of Absent Parents

If termination of parental rights is requested, only a child's legal father may be identified in the petition. If no legal father exists and proper notice has been provided to a putative father, the court may terminate any parental rights that putative father may possess. If a child has no legal

father, and a putative father has or had an established custodial or support relationship with the child but has failed to legally establish his paternity for that child, the court may terminate any parental rights that putative father may have pursuant to the Juvenile Code. If neither a legal father nor a putative father has been identified, the court may include in its order a provision that terminates the rights of the child's mother and sole legal parent, and the rights of the child's biological father, including any rights the unidentified father may have.

At least one statutory ground for termination of the absent legal parent's parental rights must be properly alleged and set forth in the supplemental petition (e.g. abandonment, failure to provide proper care of custody).

A respondent-parent must be personally served with a summons and a copy of a petition requesting termination of that parent's rights. If personal service is impracticable or cannot be achieved, an alternate method of service may be used.

If the court has entered a dispositional order placing a child in the temporary custody of the court, the court may not proceed to a hearing on termination of parental rights without issuing a new summons and ensuring proper service of that summons. A respondent-parent must be personally served with a summons and a copy of a petition requesting termination of parental rights. The rules governing service in child protective proceedings include provisions for substituted service, including service by registered mail or publication, when personal service is impracticable or the parent's whereabouts are unknown. Before resorting to notice by publication, however, the court must determine whether reasonable efforts were made to locate the absent parent. MCR 3.920.

Section IV: RESOURCES

THE OFFICE OF CHILD SUPPORT

The Office of Child Support (OCS) has access to a variety of resources that can be extremely helpful in efforts to locate an absent parent and is willing to work with Department of Human Services staff to assist in locating absent parents.

Federal Parent Locator Service (FPLS)

- FPLS is a good resource for an initial search and is available to foster care staff
- Having the social security number is extremely helpful when making the request
- FPLS requests can be made without opening a case for support
- To request FPLS, send an email to FIA-OCS-CFU-Staff1@michigan.gov (include "Locate" in the subject line or, for urgent requests, "Locate-Urgent") or call (866) 281–0031.

Paternity and Payment Inquiries

The Office of Child Support will determine whether paternity has been established for children involved in Child Protective Services investigations.

The Central Functions Unit of the Office of Child Support will provide the following:

- Paternity information
- Last known address of the noncustodial parent
- Payment information on a court order, if one exists

Contact the Central Functions Unit by calling (866) 281-0031.

Requesting Assistance

The following available information should be provided when requesting assistance of the Office of Child Support. Make sure that information (dates, spellings, etc.) is accurate.

- Social security number
- Driver's license number
- Last known address
- Prior or subsequent marriages/children
- Spelling of party's names
- Date of birth
- Last place of employment
- Hometown
- Miscellaneous family information
- Mother's maiden name

You can find out the progress of efforts to locate and/or establish paternity and child support by calling the Central Functions Unit at 866-281-0031.

Office of Child Support Assistance Eligibility

A threshold requirement for assistance from the Office of Child Support is that the child must be eligible for any of the following programs.

- Family Independence Program (FIP)
- Title IV-E (foster care maintenance payments)
- Child Development Care (CDC)
- Food Assistance Program (FAP)
- Medicaid

There are two ways the Office of Child Support Services can provide help for children in substitute care:

- Public Assistance Eligibility. Any child who is currently eligible or is a former recipient of FIP or Medicaid (this includes county and state funded foster care placements) is eligible for Office of Child Support assistance. Also, if IV-E maintenance payments are being made, the child is also IV-D eligible and services can be requested from the Office of Child Support. An automated referral is made via the Customer Information System (CIMS) to the Michigan Child Support Enforcement System (MiCSES) by coding the mother/father status codes correctly on the child's Medicaid case.
- A request for IV-D services can be made by a relative caregiver who is not receiving a foster care payment or FIP and/or Medicaid. Relative caregivers in this category request services by completing a Form DHS-1201: *Non-FIP Child Support Services Application* and submitting it to the Office of Child Support at the following address:

Office of Child Support
Attn: Central Functions Unit
235 S. Grand Avenue
Lansing, MI 48909

FRIEND OF THE COURT

The local friend of the court may assist in locating an absent parent. The friend of the court has access to the Michigan Child Support Enforcement System database and can access information for all 83 counties in Michigan.

Access to the friend of the court will require agreements at the local level to establish a protocol for sharing information. In communities where agreements are reached, the friend of the court will need as much of the following information as possible:

- Full name of the absent parent (including any alias)
  - Date of birth
  - Social security number
  - Last known address, employer, and phone number
  - Marital status
- Full name of custodial parent
  - Date of birth
  - Social security number
- Full names of children, including date of birth and social security numbers

OTHER RESOURCES

Other Office of Child Support parent locating resources include:

- Department of Consumer and Industry Services
- Department of Natural Resources (hunting and fishing license)
- Department of Defense (military enrollment)
- Department of Corrections (offender tracking system)
- Secretary of State
- U.S. Postal Service
- New hire database
- Quarterly wage data

APPENDICES

Appendix 1: Legal Fathers – Identifying a Child's Father

Section I of this protocol emphasizes the need to identify whether there is a legal father before determining if there is a putative father. This appendix provides more detailed information on the five ways identified in Section I that a man may be established as a legal father. A man may be found to be a legal father if he:

1. ***Is married to the child's mother at any time from the child's conception to the child's birth.*** If the child's mother is married at any time from the child's conception to birth, the man to whom she is married is presumed to be the child's legal father. Note that a child's presumed legal father is not necessarily the child's biological father. For example, if an unmarried woman conceives a child with a man then marries another man prior to the child's birth, the woman's husband is the child's presumed legal father, not the man with whom she conceived the child.

   If a legal father exists, a putative father (an alleged biological father) is not identified nor allowed to participate in a child protective proceeding. Only the child's mother or legal father may attempt to rebut this presumption of the child's legitimacy. If the presumption is rebutted, the court in a child protective proceeding may find that the child was "not an issue of the marriage," but the court may not make a legal determination that the putative father is the child's legal father. Instead, the child's putative father must establish legal paternity under the Paternity Act[2] or, if the child's mother consents, under the Acknowledgment of Parentage Act.

2. ***Has legally adopted the child.***

3. ***Has been determined to be the child's legal father in an order of filiation or judgment of paternity as a result of an action under the Paternity Act.*** Actions under the Paternity Act are only available when a child is born out of wedlock, i.e. when the child's mother is unmarried during the entire gestation period or the mother gets married during that period, but a court has previously determined that the child is not a product of the marriage.

[2] If the foster care worker makes a referral to the Child Support Unit and the prosecuting attorney files an action under the paternity act, the prosecuting attorney's office is reimbursed for this activity under the IV-D contract.

4. ***Has been determined by a judge in a divorce action to have parental rights.*** In a divorce action, there are two situations where a judge may determine that a husband who is not a child's biological father has parental rights. First, a judge may determine that a man is an "equitable father" if:

   - he is married to the child's mother, but is not the biological parent of a child born or conceived during the marriage,
   - he and the child mutually acknowledge a relationship as father and child, or the child's mother has cooperated in the development of a father-child relationship over a period of time prior to filing for divorce,
   - he desires to have the rights afforded to a parent, and
   - he is willing to take on the responsibility of paying child support.

   Second, a judge may determine that a man should be estopped (prevented) from denying he is a child's legal father if the man is married to the child's mother, is not the child's biological father, does not want the rights afforded to a parent, and refuses to pay child support. A judge may assign such a man parental rights if it would be unfair not to do so. For example, a judge may assign the man parental rights if he married the child's mother while she was pregnant knowing that he was not the child's biological father, or if the man dissuaded the child's mother from placing the child for adoption and agreed to raise the child as his own.

   For a man to be determined to have parental rights in a divorce action, the man and the child's mother must be married to one another. The circumstances outlined in this section do not apply to unmarried people.

5. ***Has been determined to be a child's legal father by the proper filing of an acknowledgment of parentage.*** A child's mother and biological father must both sign the acknowledgment of parentage, which must then be filed with the state registrar. As under the Paternity Act, actions under the Acknowledgment of Parentage Act are only available when a child is born out of wedlock, i.e. when the child's mother is unmarried during the entire gestation period or the mother gets married during that period, but a court has previously determined that the child is not a product of the marriage.

   If there is no legal father, the court may identify a putative father. A putative father is an alleged biological father of a child who has no legal father as defined above. If a legal father exists, a putative father may not be identified or participate in a child protective

proceeding unless the presumption of a child's legitimacy is rebutted as explained under Section (1) of this Appendix. If no legal father exists, a court may conduct a putative father hearing to identify the alleged father, facilitate notification of the alleged father, and allow him to legally establish his paternity of the child.

If a child's mother is married at the time of birth, the mother's husband must be identified as the father on the child's birth certificate. If a child's mother is unmarried at the time of birth, a father's name may not be placed on the child's birth certificate without the completion and filing of an acknowledgment of parentage or a court order following a paternity action.

Appendix 2: Conducting a Serafin Hearing *(Serafin v Serafin*, 401 Mich 629 (1977))

In Section III (Court Proceedings), the right of legal parents to petition the court for a Serafin hearing is discussed. (The name of this hearing is derived from the Michigan Supreme Court case that established the ability of a legal parent to rebut the presumption of a child's legitimacy, Serafin v Serafin, 401 Mich 629 (1977)). This appendix explains more fully the circumstances under which a legal father may seek a court determination as to whether he is, in fact, the biological parent when there is an existing legal presumption of his parentage.

If a child's mother is married at any time from the child's conception to birth, the mother's husband is presumed to be the child's legal father. This presumption of legitimacy applies in child protective proceedings. When a child is conceived or born during a marriage, a strong, though rebuttable, presumption of legitimacy arises, but the husband or wife may testify regarding nonaccess to one another. This presumption of legitimacy must be rebutted by clear and convincing evidence.

If both legal parents assert the presumption of legitimacy, third parties (i.e., a putative father) may not attack it. If both legal parents attack the presumption, it may be rebutted through their testimony alone. A legal father may contest paternity with the results of a paternity test. Test results that preclude the possibility that a man is a child's biological father are conclusive and sufficient to rebut the presumption of legitimacy. Similarly, a child's mother may contest the legal father's paternity by requesting that a court order the legal father to submit to testing. A mother's testimony that she is uncertain whether the legal father is the biological father has been held insufficient to rebut the presumption of legitimacy.

Where a legal father exists, a putative father may not be identified or participate in child protective proceedings. However, if the mother and legal father rebut the presumption of legitimacy during the child protective proceeding, a court may make a finding that a child is not the issue of a marriage. The court may not, however, determine a child's paternity within the child protective proceeding. Instead, a putative father may be allowed an opportunity to establish his paternity in a separate proceeding, as provided in Section III of this protocol. The court's finding that the child is not an issue of the marriage qualifies as a prior court finding, allowing the putative father to proceed under the Paternity Act. If the putative father properly establishes his paternity, he then has standing to participate in the child protective proceeding.

A putative father does not have standing to intervene in a child protective proceeding following termination of the legal father's parental rights. Termination of the mother's and legal father's parental rights is not a determination that the child was not the issue of the marriage.

September 2005

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 21

Appeals

21.4 Filing Requirements

On page 454, replace the first paragraph and the quote of MCR 7.302(C)(4)(a)–(b) with the following text:

MCR 7.302(C)(4)* provides that if the Court of Appeals remands the case to a lower court for further proceedings, the application for leave may be filed within 28 days from orders terminating parental rights or within 42 days in other civil cases, after one of the following:

*Effective September 1, 2005.

> "(a) the Court of Appeals decision ordering the remand,
>
> "(b) the Court of Appeals clerk mails notice of an order denying a timely filed motion for rehearing of a decision remanding the case to the lower court for further proceedings, or
>
> "(c) the Court of Appeals decision disposing of the case following the remand procedure, in which case an application may be made on all issues raised in the Court of Appeals, including those related to the remand question."

June 2005

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 18

Hearings on Termination of Parental Rights

18.20 Termination on the Grounds of Failure to Rectify Conditions Following the Court's Assumption of Jurisdiction–§19b(3)(c)

Case Law

Insert the following case summary before the summary of *In re AH* on page 403:

- *In re Fried,* ___ Mich App ___, ___ (2005)

The trial court did not err in terminating respondent-father's parental rights to his child under §19b(3)(c)(*i*). Respondent's drug addiction continued to exist at the time of the hearing on termination of rights, and, although he had begun to address his addiction, evidence showed that it would take 18-24 months before respondent would overcome denial of his addiction. Moreover, if respondent successfully completed substance abuse treatment, he would then need to address "underlying personality issues." Because the earliest time that respondent would be able to care for his 14-month-old child was in two years, the trial court properly found that the conditions that led to adjudication would not be rectified in a reasonable time given the child's age.

CHAPTER 20

"Child Custody Proceedings" Involving Indian Children

20.3 Determining Whether a Child Is an "Indian Child"

On page 429 before the last paragraph, insert the following text:

"Indian tribe" defined. An "Indian tribe" means "any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary [of the Interior] because of their status as Indians[.]" 25 USC 1903(8). The court determines whether a tribe is an "Indian tribe." *In re NEGP,* 245 Mich App 126, 133-34 (2001).

In *In re Fried*, ___ Mich App ___, ___ (2005), the respondent claimed that the trial court erred in failing to apply ICWA to the proceedings because the child was eligible for membership in the "Lost Cherokee Nation." The Court of Appeals held that "because the tribe to which respondent belongs is not a tribe recognized as eligible for services provided to Indians by the Secretary of the Interior, it is not an 'Indian tribe' within the meaning of the ICWA. 25 USC 1903(8), (11)." *Fried, supra.*

May 2005

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 22

Family Division Records

22.1 Family Division Records

Beginning on page 457, replace the sentence before the bulleted list and the bulleted list with the following text:

The Michigan Supreme Court Case File Management Standards and MCR 8.119(D)(1)(c) require a register of actions to contain specific information. MCR 8.119(D)(1)(c)* states:

*Effective May 1, 2005.

> "Register of Actions. The clerk shall keep a case history of each case, known as a register of actions. The register of actions shall contain both pre- and post-judgment information. When a case is commenced, a register of actions form shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, the following shall be noted chronologically on the register of actions as it pertains to the case:
>
> (*i*) the offense (if one);
>
> (*ii*) the judge assigned to the case;
>
> (*iii*) the fees paid;
>
> (*iv*) the date and title of each filed document;
>
> (*v*) the date process was issued and returned, as well as the date of service;
>
> (*vi*) the date of each event and type and result of action;
>
> (*vii*) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating

whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;

(*viii*) the orders, judgments, and verdicts;

(*ix*) the judge at adjudication and disposition;

(*x*) the date of adjudication and disposition; and

(*xi*) the manner of adjudication and disposition.

"Each notation shall be brief, but shall show the nature of each paper filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action."

April 2005

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 12

Trials

Appendix: Child Protection Jury Instructions

Effective March 12, 2005, the Committee on Model Civil Jury Instructions adopted new jury instructions for use in child protective proceedings. These new jury instructions are substantially similar to instructions approved for use by the Michigan Probate Judges Association, and which are currently reproduced in the appendix to Chapter 12. Replace the appendix to Chapter 12 with the following new jury instructions:*

*The new jury instructions may also be viewed online at www.courts.mi.gov/mcji/adopted-instructions/ch97.htm.

I. INSTRUCTIONS PRIOR TO VOIR DIRE

Preliminary Instructions to Prospective Jurors—M Civ JI 97.01

(1) Ladies and gentlemen, I am Judge [_____] and it is my pleasure and privilege to welcome you to the [_____] County Circuit Court.

(2) I know that jury service may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are called upon to perform.

(3) The jury is an important part of this court. The right to a trial by jury is an ancient tradition and is part of our legal heritage.

(4) Jurors must be as free as humanly possible from bias, prejudice or sympathy for any party. All parties in a trial are entitled to jurors who can keep an open mind until the time comes to decide the case.

Selection of Fair and Impartial Jury—M Civ JI 97.02

(1) A trial begins with the selection of a jury. The purpose of this process is to obtain information about you that will help us choose a fair and impartial jury to hear this case.

(2) During jury selection the lawyers and I will ask you questions. This is called the voir dire. The questions are meant to find out if you know anything about the case. Also, we need to find out if you have any opinions or personal experiences that might influence you for or against any of the parties or witnesses.

(3) The questions may probe deeply into your attitudes, beliefs and experiences. They are not meant to be an unreasonable prying into your private lives. The law requires that we get this information so that an impartial jury can be chosen.

(4) If you do not hear or understand a question, you should say so. If you do understand it, you should answer it truthfully and completely. Please do not hesitate to speak freely about anything you believe we should know.

Challenges—M Civ JI 97.03

During jury selection you may be excused from serving on the jury in one of two ways. First, I may excuse you for cause; that is, I may decide that there is a valid reason why you cannot or should not serve in this case. Second, a lawyer for one of the parties may excuse you without giving any reason for doing so. This is called a peremptory challenge. The law gives each party the right to excuse a certain number of jurors in this way. If you are excused, you should not feel bad or take it personally. As I explained before, there simply may be something that causes you to be excused from this particular case.

Brief Description—M Civ JI 97.04

You have been called here today as prospective jurors in the Family Division of the [_____] County Circuit Court. This is a child protection proceeding. It is not a criminal case.

Introduction to Parties, Counsel, and Witnesses—M Civ JI 97.05

(1) I will now introduce the parties to this case, the lawyers, and the witnesses, and you will be asked if you know any of them.

(2) The petitioner is [_____]. The petitioner's case will be presented by [Prosecutor, Attorney General, other Attorney]. The People of the State of Michigan are represented by [_____], an assistant prosecuting attorney for [_____] County.*

*This sentence should be read only if the prosecutor appears on behalf of the people, as opposed to appearing on behalf of or as a legal consultant to, for example, the Family Independence Agency. MCL 712A.17(4) and (5), and MCR 3.914.

(3) The [mother/father/parents/guardian/nonparent adult/ respondent/ custodian] [is/are] [_____/ and _____] and [he/she/they] [is/are] represented by lawyer _____.

(4) [_____], a lawyer, has been appointed by the Court to represent the [child/children]. (If both a lawyer-guardian ad litem and an attorney have been appointed for one or more of the children, give the following instead: [_____], a lawyer, has been appointed by the court to represent the best interests of the [child/children] and is called the lawyer-guardian ad litem for the [child/children]. [_____], a lawyer, has been appointed by the court to represent the wishes of child's name].)

(5) The witnesses who may testify in this case are: (read list of witnesses).

Reading of Petition—M Civ JI 97.06

We are here today on a petition filed by [_____], a Children's Protective Services worker for the [_____] County Family Independence Agency*, alleging that the Court has jurisdiction over [names of children], who [was/ were] born on [_____], and [is/are] now [____] years of age. Under Michigan law, the Family Division of the Circuit Court has jurisdiction in proceedings concerning any child under 18 years of age found within the County: (read pertinent statutory allegations from MCL 712A.2(b)(1),(2),(3),(4) and/or (5)).

*Because others may file petitions, this sentence may need to be modified accordingly.

The allegations which the petitioner will attempt to prove are as follows: (read factual allegations in petition.)

Juror Oath Before Voir Dire—M Civ JI 97.07

(1) I will now ask you to stand and swear to truthfully and completely answer all the questions that you will be asked about your qualifications to serve as

jurors in this case. If you have religious beliefs against taking an oath, you may affirm that you will answer all the questions truthfully and completely.

(2) Please raise your right hand. Do you solemnly swear or affirm that you will truthfully and completely answer all questions about your qualifications to serve as jurors in this case?

Seating of Jurors—M Civ JI 97.08

The bailiff/clerk will now draw the names of [six/seven] prospective jurors. As your name is called, please come forward and take your seat in the jury box, starting in the back row with the seat closest to the back of the courtroom, and filling in across the back row and then the front row in the same manner.

II. INSTRUCTIONS PRIOR TO PROOFS

Juror Oath Following Selection—M Civ JI 97.09

Ladies and gentlemen of the jury, I will now ask you to stand and swear or affirm to perform your duty to try this case justly and to reach a true verdict. Please rise and raise your right hand:

Do you solemnly swear or affirm that, in this case now before the court, you will justly decide the questions submitted to you and unless you are discharged by the Court from further deliberation, you will render a true verdict; that you will render your verdict only on the evidence introduced and in accordance with the instructions of the Court?

Description of Trial Procedure—M Civ JI 97.10

(1) Now I will explain some of the legal principles you will need to know and the procedure we will follow in this trial.

(2) First, [Prosecutor, Attorney General, other Attorney] will make an opening statement in which [he/she] will give [his/her] theory of the case. The other lawyers do not have to make opening statements, but if they choose to do so, they may make an opening statement after [Prosecutor, Attorney General, other Attorney] makes [his/her], or they may wait until later. These opening statements are not evidence. They are only meant to help you understand how each party sees the case.

(3) Next, [Prosecutor, Attorney General, other Attorney] will present [his/her] evidence. [He/she] may call witnesses to testify and may show you exhibits such as documents or physical objects. The other lawyers have the right to cross-examine, that is, to question, [Mr./Ms. _____'s] witnesses.

(4) After [Prosecutor, Attorney General, other Attorney] has presented all of [his/her] evidence, the other lawyers may also offer evidence, but they do not have to. If they do call any witnesses, [Prosecutor, Attorney General, other Attorney] has the right to cross-examine them. [He/she] may also call witnesses to contradict the testimony of the other parties' witnesses.

(5) After all the evidence has been presented, the lawyers for each party will make their closing arguments. Like opening statements, they are not evidence. They are only meant to help you understand the evidence and the way each party sees the case. You must base your verdict only on the evidence.

Function of Judge and Jury—M Civ JI 97.11

(1) My responsibility as the judge in this trial is to make sure that the trial is run fairly and efficiently, to make decisions about evidence, and to instruct you about the law that applies to this case. You must take the law as I give it to you. Nothing I say is meant to reflect my own opinions about the facts of the case. As jurors, you are the ones who will decide this case.

(2) Your responsibility as jurors is to decide what the facts of the case are. That is your job and no one else's. You must think about all the evidence and then decide what each piece of evidence means and how important you think it is. This includes how much you believe what each of the witnesses said. What you decide about any fact in this case is final.

Jury Must Only Consider Evidence; What Evidence Is—M Civ JI 97.12

When it is time for you to decide the case, you are only allowed to consider the evidence that was admitted in the case. Evidence includes only the sworn testimony of the witnesses, the exhibits, such as documents or other things which I admit into evidence, and anything else I tell you to consider as evidence.

Judging Credibility and Weight of Evidence—M Civ JI 97.13

(1) It is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you have based on the race, gender, or national origin of the witness.

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Does the witness seem to have a good memory?

(c) How does the witness look and act while testifying? Does the witness seem to be making an honest effort to tell the truth, or does the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age or maturity affect how you judge his or her testimony?

(e) Does the witness have any bias or prejudice or any personal interest in how this case is decided?

(f) Have there been any promises, threats, suggestions, or other influences that affect how the witness testifies?

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

Questions Not Evidence—M Civ JI 97.14

The questions the lawyers ask the witnesses are not evidence. Only the answers are evidence. You should not think that something is true just because one of the lawyers asks questions that assume or suggest that it is true.

Court's Questioning Not Reflective of Opinion—M Civ JI 97.15

I may ask questions of some of the witnesses. These questions are not meant to reflect my opinion about the evidence. If I ask questions, my only reason would be to ask about things that may not have been fully explored.

Questions by Jurors Allowed—M Civ JI 97.16

(1) During the trial you may think of an important question that would help you understand the facts in this case. You are allowed to ask such questions.

(2) You should wait to ask questions until after a witness has finished testifying. If you still have an important question after all of the lawyers have finished asking their questions, don't ask it yourself. Instead, raise your hand, write the question down, and pass it to the bailiff. [He/she] will give it to me.

(3) There are rules of evidence that a trial must follow. If your question is allowed under those rules, I will ask the witness your question. If your question is not allowed, I will either rephrase it or I will not ask it at all.

Objections—M Civ JI 97.17

During the trial the lawyers may object to certain questions or statements made by the other lawyers or witnesses. I will rule on these objections according to the law. My rulings are not meant to reflect my opinion about the facts of the case.

Disregard Out-of-Presence Hearings—M Civ JI 97.18

Sometimes the lawyers and I will have discussions out of your hearing. Also, while you are in the jury room I may have to take care of other matters that have nothing to do with this case. Please pay no attention to these interruptions.

Jurors Not to Discuss Case—M Civ JI 97.19

You must not discuss the case with anyone, including your family or friends. You must not even discuss it with the other jurors until the time comes for you

to decide the case. I will tell you when it is time for you to decide the case, and will send you to the jury room to begin your deliberations. You should then discuss the case among yourselves, but only in the jury room and only when all the jurors are there. When the trial is over, you may, if you wish, discuss the case with anyone.

Recesses—M Civ JI 97.20

(1) If I call for a recess during the trial, I will either send you back to the jury room or allow you to leave the building. During these recesses you must not discuss the case with anyone or let anyone discuss it with you or in your presence. If someone tries to do that, tell him or her to stop, and explain that as a juror you are not allowed to discuss the case. If he or she continues, leave them at once and report the incident to me as soon as you return to court.

(2) You must not talk to the parties, lawyers, or the witnesses about anything at all, even if it has nothing to do with the case.

(3) It is very important that you only get information about the case here in court, when you are acting as the jury and when the parties, the lawyers, and I are all here.

Caution about Publicity in Cases of Public Interest—M Civ JI 97.21

(1) During the trial, do not read, listen to, or watch any news reports about the case. Under the law, the evidence you consider to decide the case must meet certain standards. For example, witnesses must swear to tell the truth, and the lawyers must be able to cross-examine them. Because news reports do not have to meet these standards, they could give you incorrect or misleading information that might unfairly favor one side. So, to be fair to both sides, you must follow this instruction.

(2) (Give the instruction below when recessing)

Remember, for the reasons I explained to you earlier, you must not read, listen to, or watch any news reports about this case while you are serving on this jury.

Visiting Scene/Conducting Experiments—M Civ JI 97.22

Do not go to the scene of any of the incidents alleged in the petition. If it is necessary for you to view a scene, you will be taken there as a group under my supervision. Do not make any investigation of your own or conduct an experiment of any kind.

Notetaking by Jurors Allowed—M Civ JI 97.23

You may take notes during the trial if you wish, but of course, you don't have to. If you do take notes, you should be careful that it does not distract you from paying attention to all the evidence. When you go to the jury room to decide on your verdict, you may use your notes to help you remember what happened in the courtroom. If you take notes, do not let anyone except the other jurors see them. You must turn them over to the [bailiff/clerk] during recesses. If you do take notes, please write your name on the first page.

Notetaking Not Allowed—M Civ JI 97.24

I don't believe that it is desirable or helpful for you to take notes during this trial. If you take notes, you might not be able to give your full attention to the evidence. Therefore, please do not take any notes while you are in the courtroom.

Inability to Hear Witness or See Exhibit—M Civ JI 97.25

If you cannot hear a question by an lawyer, an answer by a witness, or anything I say, please raise your hand. When I recognize you, you should indicate what you did not hear. Do not hesitate to ask something be repeated, as it is very important that you hear everything that is said.

Defining Legal Names of Parties and Counsel—M Civ JI 97.26

From time to time throughout the trial I may address the lawyers as counsel, which is another word for lawyer.

Number of Jurors—M Civ JI 97.27

You can see that we have chosen a jury of seven. After you have heard all the evidence and my instructions, there will be a drawing by lot to decide which one of you will be excused in order to form a jury of six.

Instructions to be Taken as a Whole—M Civ JI 97.28

I may give you more instructions during the trial, and at the end of the trial I will give you detailed instructions about the law in this case. You should consider all of my instructions as a connected series. Taken together, they are the law which you must follow.

Deliberations and Verdict—M Civ JI 97.29

After all of the evidence has been presented and the lawyers have given their closing arguments, I will give you detailed instructions about the rules of law that apply to this case. You will then go to the jury room to decide on your verdict.

Maintaining an Open Mind—M Civ JI 97.30

It is important for you to keep an open mind and not make a decision about anything in the case until you go to the jury room to decide the case.

III. INSTRUCTIONS AFTER PROOFS

Duties of Judge and Jury—M Civ JI 97.31

(1) Members of the jury, the evidence and arguments in this case are finished, and I will now instruct you on the law. That is, I will explain the law that applies to this case.

(2) Remember that you have taken an oath to return a true and just verdict, based only on the evidence and my instructions on the law. You must not let sympathy or prejudice influence your decision.

(3) It is my duty to instruct you on the law. You must take the law as I give it to you. If an lawyer says something different about the law, follow what I say. At various times, I have already given you some instructions about the law. You must take all my instructions together as the law you are to follow. You should not pay attention to some instructions and ignore others.

(4) As jurors, you must decide what the facts of this case are. You must think about all the evidence and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each of the witnesses said.

(5) To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you, and, in that way, to decide the case.

Evidence—M Civ JI 97.32

(1) When you discuss the case and decide on your verdict, you may only consider the evidence that has been properly admitted in this case. Therefore, it is important for you to understand what is evidence and what is not evidence.

(2) The evidence in this case includes only the sworn testimony of witnesses (the exhibits which I admitted into evidence, and anything else I told you to consider as evidence).

(3) Many things are not evidence and you must be careful not to consider them as evidence. I will now describe some of the things that are not evidence.

(4) The fact that a petition was filed alleging that the Court has jurisdiction over [Children's names], and that [he/she/they] [was/were] placed in foster care pending this hearing, and that [Mother's, Father's, Guardian's, Nonparent Adult's or Custodian's names] [is/are] present in court today is not evidence.

(5) The lawyers' statements and arguments are not evidence. They are only meant to help you understand the evidence and the theory of each party. The questions which the lawyers ask witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge.

(6) My comments, rulings, questions and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you

should decide this case, you must pay no attention to that opinion. You are the only judges of the facts and you should decide this case from the evidence.

(7) At times during the trial, I have excluded evidence that was offered or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence that I let in, and nothing else.

(8) Your decision should be based on all of the evidence regardless of which party produced it.

(9) You should use your own common sense and general knowledge in weighing and judging the evidence, but you should not use any personal knowledge you may have about a place, person or event. To repeat once more, you must decide this case based only on the evidence admitted during the trial.

Witnesses-Credibility—M Civ JI 97.33

(1) As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness said. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness's testimony, you must set aside any bias or prejudice you may have based on the race, gender, or national origin of the witness.

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Did the witness seem to have a good memory?

(c) How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age or maturity affect how you judge his or her testimony?

(e) Does the witness have any bias or prejudice or any personal interest in how this case is decided?

(f) (Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?)

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

(4) Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think someone is lying or is simply mistaken. People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case.

(5) However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said. On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

Circumstantial Evidence—M Civ JI 97.34

(1) Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

(2) Facts can also be proved by indirect, or circumstantial, evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water, that would be circumstantial evidence that it is raining.

(3) You may consider circumstantial evidence. Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove a fact.

Statutory Grounds—M Civ JI 97.35

*The court should select the subsections that apply.

(1) The issue that you, the jury, will have to decide is whether one or more of the statutory grounds alleged in the petition have been proven. If you find that one or more of the statutory grounds alleged in the petition have been proven, then the Court will have jurisdiction over [Children's names]. I will now explain what those statutory grounds are. The Court has jurisdiction over a child:*

(a) If that child's parent or other person legally responsible for the care and maintenance of that child, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, or

(b) If that child is subject to a substantial risk of harm to his or her mental well-being, or

(c) If that child is abandoned by his or her parents, guardian or other custodian, or

(d) If that child is without proper custody or guardianship, or

(e) If that child's home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult or other custodian, is an unfit place for that child to live in, or

(f) If that child's parent has substantially failed, without good cause, to comply with a limited guardianship placement plan regarding the child, or

(g) If that child's parent has substantially failed, without good cause, to comply with a court-structured plan regarding the child, or

(h) If that child has a guardian appointed for him or her under the Michigan Estates and Protected Individuals Code and

(*i*) that child's parent, having the ability to support or assist in supporting the child, has failed or neglected, without good cause, to provide regular and substantial support for the child for a period of two years or more before the filing of the petition, or if a support order has been entered, has failed to substantially comply with the order for a period of two years or more before the filing of the petition, and

(*ii*) that child's parent, having the ability to visit, contact or communicate with the child, has regularly and substantially failed or neglected, without good cause, to do

so for a period of two years or more before the filing of the petition.

Definitions—M Civ JI 97.36

(1) Neglect means the failure of a parent, guardian, nonparent adult or custodian to provide the care that a child needs, including the failure to protect the physical and emotional health of a child. Neglect may be intentional or unintentional. It is for you, the jury, to determine from the evidence in this case, what care was necessary for the [child/children] and whether or not [his/her/their] parent(s), guardian, nonparent adult or custodian provided that care.

(2) The legal definition of cruelty is the same as the common understanding of the word cruelty. It implies physical or emotional mistreatment of a child.

(3) Depravity means a morally corrupt act or practice.

(4) The legal definition of criminality is the same as the common understanding of the word criminality. Criminality is present when a person violates the criminal laws of the State of Michigan or of the United States. Whether a violation of the criminal laws of the State of Michigan or of the United States by a parent, guardian, nonparent adult or custodian renders the home or environment of a child an unfit place for the child to live in is for you to decide based on all of the evidence in the case.

(5) A child is without proper custody or guardianship when he or she is: 1) left with, or found in the custody of, a person other than a legal parent, legal guardian or other person authorized by law or court order to have custody of the child, and 2) the child was originally placed, or came to be, in the custody of a person not legally entitled to custody of the child for either an indefinite period of time, no matter how short, or for a definite, but unreasonably long, period of time. What is unreasonably long depends on all the circumstances. It is proper for a parent or guardian to place his or her child with another person who is legally responsible for the care and maintenance of the child and who is able to and does provide the child with proper care and maintenance. A baby sitter, relative or other care-giver is not legally responsible for the care and maintenance of a child after the previously agreed-upon period of care has ended.

(6) Education means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a child, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(7) A child is abandoned when the child's [parent(s)/guardian/custodian] leave(s) the child for any length of time, no matter how short, with the intention of never returning for the child. The intent of the [parent(s)/

guardian/custodian] to abandon the child may be inferred from the [parent's/parents'/guardian's/custodian's] words and/or actions surrounding the act of leaving the child.

Standard of Proof—M Civ JI 97.37

The standard of proof in this case is proof by a preponderance of the evidence. Proof by a preponderance of the evidence means that the evidence that a statutory ground alleged in the petition is true outweighs the evidence that that statutory ground is not true.

No Duty to Present Evidence—M Civ JI 97.38

[Mother's, Father's, Guardian's, Nonparent Adult's or Custodian's names] [has/have] no duty to present evidence that the statutory grounds alleged in the petition are not true. It is your duty to decide from the evidence that you have heard whether one or more of the statutory grounds alleged in the petition are true.

Treatment of One Child as Evidence of Treatment of Another Child—M Civ JI 97.39

You have heard testimony about [another child/other children] of [Mother's/Father's names], namely, [Children's names]. [That child/Those children] [is/are] not the subject(s) of the petition(s) before you now. How a parent treats one child is evidence of how that parent may treat another child. Therefore, if you choose to believe the evidence, presented by any party, relating to how [Mother's/Father's names] treated [that other child/those other children], you may consider it in making your decision in relation to [this child/any or all of these children].

Improvement in Circumstances Not Controlling—M Civ JI 97.40

If you find that one or more of the statutory grounds alleged in the petition have been proven, the fact that circumstances may have improved since [date petition filed or another more appropriate date, where applicable] does not negate your finding.

Not Necessary to Prove Each Fact Alleged—M Civ JI 97.41

It is not necessary that each and every fact alleged in the petition be proven before you can find that one or more of the statutory grounds alleged in the petition have been proven. It is necessary, however, that sufficient facts be proven so that, in your judgment, you can find by a preponderance of the evidence that one or more of the statutory grounds alleged in the petition have been proven.

Unfit Home by Reason of Neglect or Cruelty —Res Ipsa Loquitur—M Civ JI 97.42

You may, but are not required to, find that the child's home or environment was an unfit place for the child to live in by reason of neglect or cruelty on the part of his or her parent, guardian, nonparent adult or custodian if you find all the following:

1) The child has suffered an injury or injuries.

2) The child was not capable of inflicting the injury or injuries on himself or herself.

3) The injury or injuries are such that would not ordinarily occur unless they were caused by another person inflicting them on the child or another person not providing proper care and supervision for the child in order to prevent the injury or injuries.

4) The child was in the exclusive control of his or her parent, guardian, nonparent adult or custodian at the time the injury or injuries occurred. The term "custodian" includes any other person to whom the parent or guardian entrusted the care of the child if the parent or guardian knew, or should have known, that that person might injure the child or permit the child to be injured through lack of proper care and supervision.

5) The true explanation of what happened to the child is more likely to be within the knowledge of the parent, guardian, nonparent adult or custodian than the petitioner.

Findings Re: Statutory Grounds—M Civ JI 97.43

(1)(a) If you find by a preponderance of the evidence that [Children's names], mother, or father, or both, when able to do so, neglected or refused to provide

proper or necessary support, medical, surgical or other care necessary for [his/her/their] health or morals, or

(b) If you find by a preponderance of the evidence that [Children's names] [was/were] subject to a substantial risk of harm to [his/her/their] mental well-being, or

(c) If you find by a preponderance of the evidence that [Children's names] [was/were] abandoned by [his/her/their] [mother/father/parents/guardian/custodian], or

(d) If you find by a preponderance of the evidence that [Children's names] [was/were] without proper custody or guardianship, or

(e) If you find by a preponderance of the evidence that the home or environment of [Children's names] was an unfit place for [him/her/them] to live in by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of [his/her/their] [mother, father, or both/guardian/nonparent adult/custodian], or

(f) If you find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a limited guardianship placement plan regarding the [child/children, or

(g) If you find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a court-structured plan regarding the [child/children], or

(h) If you find by a preponderance of the evidence that [Children's names] [has/have] a guardian appointed for [him/her/them] under the Michigan Estates and Protected Individuals Code, and

(*i*) that [Children's names] mother, or father, or both, having the ability to support or assist in supporting the [child/children], [has/have] failed or neglected, without good cause, to provide regular and substantial support for the [child/children] for a period of two years or more before the filing of the petition, or if a support order has been entered, [has/have] failed to substantially comply with the order for a period of two years or more before the filing of the petition, and

(*ii*) that [Children's names] mother, or father, or both, having the ability to visit, contact or communicate with the [child/children], [has/have] regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition, then you must find that one or more of the statutory grounds alleged in the petition have been proven. (Read

only those paragraphs below that have the same letter caption as the paragraphs you read from the first half of this instruction.)

(2)(a) If you do not find by a preponderance of the evidence that [Children's names] mother, or father, or both, when able to do so, neglected or refused to provide proper or necessary support, medical, surgical or other care necessary for [his/her/their] health or morals, and

(b) If you do not find by a preponderance of the evidence that [Children's names] [was/were] subject to a substantial risk of harm to [his/her/their] mental well-being, and

(c) If you do not find by a preponderance of the evidence that [Children's names] [was/were] abandoned by [his/her/their] [mother/father/parents/guardian/custodian], and

(d) If you do not find by a preponderance of the evidence that [Children's names] [was/were] without proper custody or guardianship, and

(e) If you do not find by a preponderance of the evidence that the home or environment of [Children's names] was an unfit place for [him/her/them] to live in by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of [his/her/their] [mother, father, or both/guardian/nonparent adult/custodian], and

(f) If you do not find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a limited guardianship placement plan regarding the [child/children], and

(g) If you do not find by a preponderance of the evidence that [Children's names] mother, or father, or both, [has/have] substantially failed, without good cause, to comply with a court-structured plan regarding the [child/children], and

(h) If you do not find by a preponderance of the evidence that [Children's names] [has/have] a guardian appointed for [him/her/them] under the Michigan Estates and Protected Individuals Code, and

(*i*) that [Children's names] mother, or father, or both, having the ability to support or assist in supporting the [child/children], [has/have] failed or neglected, without good cause, to provide regular and substantial support for the [child/children] for a period of two years or more before the filing of the petition, or if a support order has been entered, [has/have] failed to substantially comply with the order for a period of two years or more before the filing of the petition, and

(*ii*) that [Children's names] mother, or father, or both, having the ability to visit, contact or communicate with the [child/children], [has/have] regularly and substantially failed or neglected, without good cause, to do so for a period of two years or more before the filing of the petition, then you must find that none of the statutory grounds alleged in the petition have been proven.

Court to Determine Disposition—M Civ JI 97.44

You are not to concern yourselves with what will happen to [Children's names] if you should find that one or more of the statutory grounds alleged in the petition have been proven. If the Court has jurisdiction of [this child/these children], that does not necessarily mean that [he/she/they] will be removed from their home or made [a ward/wards] of the court either temporarily or permanently. If the Court has jurisdiction of [this child/these children], the Court will then decide at a later time what to do about [this child/these children] and [his/her/their] family. There are many options available to the Court.

Not a Criminal Proceeding—M Civ JI 97.45

I instruct you that this is a child protection proceeding. It is not a criminal case. Therefore, the issue before you is not that of guilt or innocence, but whether one or more of the statutory grounds alleged in the petition have been proven. You should not consider this proceeding to be in any way involved with the criminal law so far as your deliberations are concerned.

Deliberations and Verdict—M Civ JI 97.46

(1) When you go to the jury room, you should first choose a foreperson. [He/she] should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.

(2) When at least five of you agree upon a verdict, it will be received as the jury's verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up your own mind. Any verdict must represent the individual, considered judgment of at least five of you.

(3) It is your duty as jurors to talk to each other and make every reasonable effort to reach agreement. Express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors. Rethink your opinions

and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences.

(4) However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because other jurors disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own, and you must vote honestly and in good conscience.

Communications with the Court—M Civ JI 97.47

(1) If you want to communicate with me while you are deliberating, please have your foreperson write a note and deliver it to the bailiff. It is not proper for you to talk directly with the judge, lawyers, court officers, or other people involved in the case.

(2) As you discuss the case, you must not let anyone, even me, know how your voting stands. Therefore, until you reach a verdict, do not reveal this to anyone outside the jury room.

Exhibits—M Civ JI 97.48

(Option 1) If you want to look at any or all of the exhibits that have been admitted into evidence, just ask for them.

(Option 2) You may take the exhibits which have been admitted into evidence into the jury room with you.

Verdict—M Civ JI 97.49

There are only two possible verdicts in this case:

(1) One or more of the statutory grounds alleged in the petition have been proven.

(2) None of the statutory grounds alleged in the petition have been proven.

These possible verdicts are set forth in the verdict form(s) which you will receive. Only one of the possible verdicts may be returned by you [as to each child]. When at least five of you have agreed upon one verdict [as to each child], your foreperson should mark that verdict.

Dismissal of Extra Juror—M Civ JI 97.50

Ladies and gentlemen of the jury: You will recall that at the beginning of the trial, I told you that while seven jurors were seated to hear this case, only six would deliberate and decide the case. Seven jurors were selected in the event one of you become ill or otherwise could not complete the case. Fortunately, all of you remained healthy, so we must now excuse one of you from further participation in this trial. If you are excused, you may either leave or may remain in the courtroom to see what the verdict will be. If you are excused, please don't feel your time has been wasted. You may have been needed and your participation was important to the administration of justice. The [bailiff/ clerk] will now draw the name of one juror by lot. [Bailiff draws name]. Thank you [name of juror]. You may step down.

Bailiff's Oath—M Civ JI 97.51

Do you solemnly swear that you will, to the best of your ability, keep the persons sworn as jurors in this trial from separating from each other, that you will not permit any communication to be made to them, or to any of them, orally or otherwise, that you will not communicate with them, or with any of them, orally or otherwise, except upon the order of this Court, or to ask them if they have agreed upon a verdict, until they shall be discharged, and that you will not, before they render their verdict, communicate to any person the state of their deliberations or the verdict they have agreed upon?

Begin Deliberations—M Civ JI 97.52

Ladies and gentlemen of the jury: Throughout this trial I have told you not to discuss the case among yourselves or with anyone else. Now is the time for you to discuss it among yourselves. Please follow the bailiff to the jury room to begin your deliberations.

IV. VERDICT FORMS

[Multiple statutory grounds alleged]

We, the jury, find that:

[ ] One or more of the statutory grounds alleged in the petition concerning (child's name) have been proven.

[ ] None of the statutory grounds alleged in the petition concerning (child's name) has been proven.

[One statutory ground alleged]

We, the jury, find that:

[ ] The statutory ground alleged in the petition concerning (child's name) has been proven.

[ ] The statutory ground alleged in the petition concerning (child's name) has not been proven.

CHAPTER 14

Paying the Costs of Child Protective Proceedings

14.1 Federal, State, and County Sources of Funding

On page 334, after the second full paragraph insert the following text:

The 50% FIA reimbursement of annual expenses does not include reimbursement for counties' capital expenditures. *Ottawa County v Family Independence Agency*, ___ Mich App ___, ___ (2005). In *Ottawa County,* eleven Michigan counties filed suit seeking reimbursement from the FIA for capital expenditures that included building, equipping, or improving juvenile detention facilities. The Court of Appeals concluded that reimbursement of a county's expenditure is conditioned upon meeting several requirements, including compliance with FIA's administrative rules and enabling statute and FIA's policies. Moreover, the Court noted that FIA is required to develop a system of reporting expenditures that only allows reimbursement "based on care given to a specific, individual child." MCL 400.117a(8). Relevant administrative rules and policies allow reimbursement of expenses necessary to provide direct services to children but severely limit reimbursement of capital expenditures because such expenditures are not attributable to the care of individual children. The Court of Appeals also concluded that FIA's failure to reimburse the counties for their capital expenditures did not violate the Headlee Amendment, Const 1963, art 9, §29. *Ottawa County, supra* at ___.

February 2005

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.18 Access to FIA's Registry

Effective January 3, 2005, 2004 PA 563 amended MCL 722.627(2) by adding a provision that allows the confidential FIA record to be made available to the Foster Care Review Board. At the bottom of page 50, after subsection (r) insert the following quote:

> "(s) A foster care review board for the purpose of meeting the requirements of 1984 PA 422, MCL 722.131 to 722.139a."

"Specified information."

Effective January 3, 2005, 2004 PA 563 amended MCL 722.622(y). On page 51, replace the quote of MCL 722.622(y) with the following quote:

> "'Specified information' means information in a children's protective services case record related specifically to the department's actions in responding to a complaint of child abuse or neglect. Specified information does not include any of the following:
>
> > (*i*) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been classified as a central registry case.

(*ii*) Information in a law enforcement report as provided in section 7(8).

(*iii*) Any other information that is specifically designated as confidential under other law.

(*iv*) Any information not related to the department's actions in responding to a report of child abuse or neglect."

CHAPTER 4

Jurisdiction, Venue, & Transfer

4.6 Anticipatory Neglect or Abuse Is Sufficient for Court to Take Jurisdiction of a Newborn Child

On page 95 before the first full paragraph, insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals held that where respondent's parental rights to previous children were involuntarily terminated based upon abandonment and her parental rights to other previous children were voluntarily terminated after child protective proceedings were initiated, it was not error for the court to find jurisdiction based upon the doctrine of anticipatory neglect. The Court rejected the mother's argument that "[p]ast conduct is not a statutory ground for asserting jurisdiction, there must be some current physical harm or threat of serious emotional harm." *Id.* at ___ quoting *Dittrick, supra* and *Powers, infra*.

CHAPTER 17

Permanency Planning Hearings

17.5 Court's Options Following Permanency Planning Hearings

On page 368 before the first full paragraph, insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court explored the distinction between "physical compliance" with the Case Service Plan and improvement in parenting ability. The Court stated:

> "'Compliance' could be interpreted as merely going through the motions physically; showing up for and sitting through counseling sessions, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes but learning nothing from them and, therefore, not changing one's harmful parenting behaviors is of no benefit to the parent or child.
>
> "It could be argued that a parent complied with a case service plan which merely required attending parenting classes but was silent as to the need for the parent to benefit from them. It is our opinion that such an interpretation would violate common sense and the spirit of the juvenile code, which is to protect children and rehabilitate parents whenever possible so that the parents will be able to provide home for their children which is free of neglect or abuse."

CHAPTER 18

Hearings on Termination of Parental Rights

18.7 Standard and Burden of Proof Required to Establish Statutory Basis for Termination

On page 379 immediately before Section 18.8, insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the trial court took jurisdiction over the children and found statutory grounds for termination of the respondent-mother's parental rights to them. The trial court entered two orders. The first order took jurisdiction of the children and required the respondent-mother to comply with the case service plan. The second order terminated the respondent-mother's parental rights to the children; however the court suspended the effect of the termination order contingent on respondent-mother's compliance with all conditions of the case service plan. The agreement to suspend the effect of the termination order to provide the respondent with an opportunity to comply with the case service plan is known as an *Adrianson** agreement. *Adrianson* agreements provide that if a respondent complies with the conditions set by the agreement, usually compliance with the case service plan, then the court would set aside the order terminating the respondent's parental rights. If the respondent fails to comply, then the termination order goes into effect. In *Gazella*, the Court of Appeals held that use of an *Adrianson* agreement violates MCL 712A.19b(5) and MCR 3.977(E), (F)(1), and (G)(3). The Court held:

**In re Adrianson,* 105 Mich App 300, 319 (1981).

> "The statute and court rule are clear: once the court finds there are statutory grounds for termination of parental rights, the court must order termination of parental rights and must further order that 'additional efforts for reunification of the child with the parent not be made,' unless the court finds that termination of parental rights to the child is clearly not in the child's best interest. . . . Once the statutory grounds for termination have been proven (unless the court finds that termination of parental rights to the child is clearly not in the child's best interest), the court must terminate parental rights immediately. An *Adrianson* order cannot be entered." *Gazella, supra* at ___.

CHAPTER 18

Hearings on Termination of Parental Rights

18.8 Requirements for the "Best Interest" Step

On page 380 before the first paragraph, insert the following text:

*See the update to Section 18.7, above, for explanation of *Adrianson* agreements.

In *In re Gazella*, ___ Mich App ___, ___ (2005), the trial court found statutory grounds for termination of the respondent-mother's parental rights and entered an order terminating her parental rights. However, pursuant to an *Adrianson* agreement,* the court suspended the effect of the termination order. The Court of Appeals held that the use of *Adrianson* agreements violates MCL 712A.19b(5) and MCR 3.977(E)(3), (F)(1), and (G)(3). *Gazella, supra* at ___.

In *Gazella*, at the time it found the statutory grounds for termination existed, the trial court stated:

> "Now obviously I have not made findings on best interest because by stipulation any order terminating her parental rights will be suspended to determine whether she is able to and does comply with conditions that may be set."

The respondent-mother failed to comply with the conditions set, and the trial court entered the order terminating her parental rights without making best interest findings. Although the respondent-mother appealed the termination of her parental rights, she did not raise the issue that the trial court failed to make best interest findings. The Court of Appeals indicated that an argument could be made that the termination order was entered erroneously because the lower court made no best interest findings. The Court of Appeals rejected this argument and stated the following in dicta:

> "Neither the statute nor court rule require the court to make specific findings on the question of best interest, although trial courts usually do. In fact, most trial courts go beyond the question of whether termination is clearly not in a child's best interest and affirmatively find that termination is in a child's best interest. Such a finding is not required, but is permissible if the evidence justifies it. The statute and court rule provide that once a statutory ground for termination has been established by the requisite standard of proof, the court must enter an order of termination unless the court finds that termination is clearly not in the child's best interest. If the court makes no finding regarding best interest, then the court has not found that termination would clearly not be in the child's best interest. While it would be best for trial courts to make a finding that there was insufficient evidence that termination was clearly not in a child's best interest, it is not required where no

party offers such evidence, as here. In order for a valid termination order to enter, when no evidence is offered that termination is clearly not in the child's best interest, all that is required is that at least one statutory ground for termination be proved."

CHAPTER 18

Hearings on Termination of Parental Rights

18.9 Termination of Parental Rights at Initial Dispositional Hearing

On page 383 immediately before Section 18.10, insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals found that MCR 3.977(E)(3) clearly provides that once the court finds a statutory ground for termination of parental rights, unless the court finds that termination of parental rights to the child is clearly not in the child's best interest, the court must terminate parental rights *immediately*. The Court held that trial courts may not enter *Adrianson** orders, whereby the termination order is suspended in order to provide the respondent with additional time to comply with a case service plan or other conditions.

**In re Adrianson*, 105 Mich App 300 (1981). See the update to Section 18.7, above, for more information on *Adrianson* orders.

CHAPTER 18

Hearings on Termination of Parental Rights

18.10 Termination of Parental Rights on the Basis of New or Different Circumstances

On page 384 before the paragraph beginning "**Time requirement for hearing** . . . ," insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals found that MCR 3.977(F)(1) clearly provides that once the court finds a statutory ground for termination of parental rights, unless the court finds that termination of parental rights to the child is clearly not in the child's best interest, the court must terminate parental rights *immediately*. The Court held that trial courts may not enter *Adrianson** orders, whereby the termination order is suspended in order to provide the respondent with additional time to comply with a case service plan or other conditions.

**In re Adrianson*, 105 Mich App 300 (1981). See the update to Section 18.7, above, for more information on *Adrianson* orders.

CHAPTER 18

Hearings on Termination of Parental Rights

18.11 Termination of Parental Rights in Other Cases

On page 387 immediately before the paragraph beginning "**Time requirement for hearing** . . . , " insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals found that MCR 3.977(G)(3) clearly provides that once the court finds a statutory ground for termination of parental rights, unless the court finds that termination of parental rights to the child is clearly not in the child's best interest, the court must terminate parental rights *immediately*. The Court held that trial courts may not enter *Adrianson** orders, whereby the termination order is suspended in order to provide the respondent with additional time to comply with a case service plan or other conditions.

**In re Adrianson*, 105 Mich App 300 (1981). See the update to Section 18.7, above, for more information on *Adrianson* orders.

January 2005

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CHAPTER 4

Jurisdiction, Venue, & Transfer

4.16 Continuation of Family Division Jurisdiction After Child Becomes 18 Years of Age

Replace the last sentence of the third paragraph, which begins on page 112 and ends on page 113, with the following sentence:

If parental rights have been terminated, the court must continue to review the case while a child is in placement or under the jurisdiction, supervision, or control of the Michigan Children's Institute. MCL 712A.19c(1)–(2) and MCR 3.978(C).

CHAPTER 5

Notice & Time Requirements

5.2 Establishing Paternity

On page 130, immediately before Section 5.3, insert the following text:

Placement of child with putative father's parent. Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13a to allow a court to place a child with a putative father's parent in some circumstances. MCL 712A.13a(1)(j) states, in part:

> "A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father. . . ."

CHAPTER 6
Petitions & Preliminary Inquiries

6.6 Preliminary Inquiries

Before the last full paragraph on page 170, insert the following text:

Effective December 28, 2004,* "relative" means:

* 2004 PA 475.

> "an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father." MCL 712A.13a(1)(j).

CHAPTER 7

Preliminary Hearings

7.6 Powers and Duties of Lawyer-Guardians Ad Litem

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.17d. LGALs are now required to review the agency case file prior to disposition and before a hearing on termination of parental rights. In addition, an LGAL must review updated materials provided to the court and parties, and a child's supervising agency must provide the child's LGAL certain information not later than five days before a hearing. The requirement that LGALs were to meet with the children before each hearing has been modified to require the LGAL to meet with the children before specific hearings. Beginning on page 186, replace the quote of MCL 712A.17d with the following:

> "(1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:
>
> (a) The obligations of the attorney-client privilege.
>
> (b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.
>
> (c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.
>
> (d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances:
>
> (*i*) Before the pretrial hearing.

(*ii*) Before the initial disposition, if held more than 91 days after the petition has been authorized.

(*iii*) Before a dispositional review hearing.

(*iv*) Before a permanency planning hearing.

(*v*) Before a post-termination review hearing.

(*vi*) At least once during the pendency of a supplemental petition.

(*vii*) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.

(e) The court may allow alternative means of contact with the child if good cause is shown on the record.

(f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.

(g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.

(h) To attend all hearings and substitute representation for the child only with court approval.

(i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.

(j) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.

> (k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker.
>
> (l) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.
>
> "(2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.
>
> "(3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable."

*Effective December 28, 2004.

An "agency case file" means "the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been removed from the home or the family independence agency or contract agency foster care file as defined under 1973 PA 116, MCL 722.111 to 722.128." MCL 712A.13a(1)(b).*

CHAPTER 8

Placement of a Child

8.1 Requirements to Release or Place a Child Pending Trial

B. Requirements to Place a Child Outside His or Her Home

Transfer of case from Children's Protective Services (CPS) to Foster Care Services.

On the bottom of page 203, replace the last three sentences with the following text:

Foster care services or agency workers complete the Initial Services Plan and arrange parenting time and, if necessary, sibling visits. If the agency becomes aware of additional abuse or neglect by a parent, guardian, custodian, nonparent adult, foster parent, or other person while the child is under the court's jurisdiction, and if the abuse or neglect is substantiated, the agency must file a supplemental petition. See MCL 712A.19(1) and FIA *Services Manual*, CFF 722-13 and CFP 716-9.

CHAPTER 8

Placement of a Child

8.2 Type of Placements Available

"Placement" defined.

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13(1)(a). Near the bottom of page 204, replace the definition of agency with the following text:

"Agency" means "a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile's care and supervision." MCL 712A.13a(1)(a).

CHAPTER 8
Placement of a Child

8.2 Type of Placements Available

Relative placements.

Before the last full paragraph on page 205, insert the following text:

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13a to add a definition of "relative" and to allow a court to place a child with a putative father's parent in some circumstances. The definition of "relative" contained in new MCL 712A.13a(1)(j) is broader than that contained in MCL 722.111(1)(o) quoted in the paragraph above. MCL 712A.13a(1)(j) states:

> "'Relative' means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not to be construed as a finding of paternity or to confer legal standing on the putative father."

CHAPTER 8

Placement of a Child

8.14 Required Procedures for Appeals of Changes of Foster Care Placements

A. Investigation by Foster Care Review Board

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13b. The amendments changed the time requirements governing the Foster Care Review Board's investigation. Replace the first paragraph on page 222 with the following text:

Within seven days of receiving an appeal from foster parents, the Foster Care Review Board must investigate the change or proposed change in placement. Within three days after completion of the investigation, the FCRB must report its findings and recommendations to the court or the MCI Superintendent (if the child is under the jurisdiction, supervision, or control of the MCI), foster care parents, parents, and the agency. MCL 712A.13b(3).

CHAPTER 13

Initial Dispositions

13.7 Case Service Plans

Effective December 28, 2004, 2004 PA 475 amended MCL 712A.13b. The amendments revised the definition of "agency" under MCL 712A.13a(1)(a). Replace the definition of "agency" in the fourth sentence in the last full paragraph at the bottom of page 316 with the following text:

'Agency' means a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b, or that is responsible under court order or contractual arrangement for a juvenile's care and supervision."

CHAPTER 13

Initial Dispositions

13.9 Dispositional Options Available to Court

B. In-Home Placement With Supervision

Replace the definition of "related" beginning on the bottom of page 320 and continuing on page 321 with the following text:

As used in MCL 712A.18(1)(b)* "related" means:

> "an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing."

*Effective December 28, 2004. 2004 PA 475.

CHAPTER 13

Initial Dispositions

13.15 Additional Allegations of Abuse or Neglect

On the bottom of page 327, replace the first paragraph and **Note** with the following text:

> "If the agency becomes aware of additional abuse or neglect of a child who is under the jurisdiction of the court and if that abuse or neglect is substantiated as provided in the child protection law . . . , the agency shall file a supplemental petition with the court." MCL 712A.19(1).

CHAPTER 16

Dispositional Reviews & Review Hearings

In this chapter . . .

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. On page 347, replace the first paragraph with the following text:

This chapter discusses the requirements for reviewing a court's initial dispositional order and compliance with the Case Service Plan. When a child has not been removed from his or her home, or when a child has been returned to his or her home following an initial removal, the court must conduct periodic review hearings to determine the family's progress toward rectifying conditions that brought the child within the court's jurisdiction.

On page 347, delete the second-to-last paragraph. The amendments to MCL 712A.19(2) deleted the requirement that the court review certain factors at a dispositional review hearing.

CHAPTER 16
Dispositional Reviews & Review Hearings

16.1 Time Requirements for Review Hearings

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. On page 348 change the title of section 16.1, as indicated above.

Replace the bulleted list on pages 348–349 with the following:

- Except as explained in the third bullet, below, a review hearing must be held not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding hearing until the case is dismissed. A review hearing shall not be cancelled or delayed beyond the number of days required, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(3).

- A permanency planning hearing must be conducted within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings shall be held no later than every 12 months after each preceding permanency planning hearing during the continuation of foster care. A permanency planning hearing shall not be canceled or delayed beyond the number of months required by MCL 712A.19a(1) or days required under MCL 712A.19a(2),* regardless of whether there is a petition for termination of parental rights or any other matter pending. MCL 712A.19a(1) as amended by 2004 PA 473 and MCL 712A.19c(1) as amended by 2004 PA 476, effective December 28, 2004.

*MCL 712A.19a(2) requires a permanency planning hearing to be held within 30 days after a judicial determination that reasonable efforts at reunification are not required.

- If a child is under the care and supervision of an agency and is in a permanent foster family agreement* or is placed with a relative in a placement intended to be permanent, a review hearing must be held not more than 182 days after the child has been removed from his or her home and not later than 182 days after that as long as the child is subject to the jurisdiction of the court, the Michigan children's institute, or other agency. A review hearing shall not be canceled or delayed beyond the number of days required, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(4).

*See Section 13.9(C) for a list of the required parties to a permanent foster family agreement.

*Effective December 28, 2004. 2004 PA 476.

- Unless a child is under the care and supervision of an agency and is in a permanent foster family agreement or is placed with a relative in a placement intended to be permanent, a review hearing must be held not more than 91 days following termination of parental rights to the child and no later than every 91 days thereafter for the first year following termination of parental rights to that child. If a child remains in a placement for more than one year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and not later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing shall not be canceled or delayed beyond the number of days required, regardless of whether any other matters are pending. MCL 712A.19c(1).*

If a child remains in his or her home, the court must conduct review hearings. MCL 712A.19(2) states in part:

*See the update above, for information on subsections (3) and (4).

> "Except as provided in subsections (3) and (4),* if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending."

CHAPTER 16

Dispositional Reviews & Review Hearings

16.1 Time Requirements for Review Hearings

Replace the second paragraph on page 350 with the following text:

Combined permanency planning hearing and review hearing. If proper notice for a permanency planning hearing is provided, then the permanency planning hearing may be combined with a review hearing, but this must occur no later than 12 months from the removal of the child from his or her home, from the preceding permanency planning hearing, or from the number of days required under MCL 712A.19a(2).

CHAPTER 16

Dispositional Reviews & Review Hearings

16.6 Records of Dispositional Review Hearings

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. Delete the last sentence of this section. MCL 712A.19(2) no longer provides for a rehearing that must be recorded stenographically.

CHAPTER 16

Dispositional Reviews & Review Hearings

16.7 Progress Reviews of Children at Home

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19(2) to require dispositional review hearings when a child remains in his or her home. On page 353, replace the first paragraph of this section with the following:

MCL 712A.19(2) requires a court to conduct a review hearing when a child remains in his or her home. That statute states:

> "Except as provided in subsections (3) and (4), if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether a petition to terminate parental rights or another matter is pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case service plan prepared according to section 18f of this chapter."

CHAPTER 17

Permanency Planning Hearings

In this chapter . . .

On page 357, replace the introductory text with the following:

This chapter discusses permanency planning hearings. The purpose of permanency planning hearings is to review and finalize a permanency plan for a child in foster care. A court must hold a permanency planning hearing no later than 12 months after a child was removed from his or her home. In cases of serious abuse or if a parent has had his or her parental rights to another child terminated, the Family Independence Agency (FIA) must file a petition in court. See Section 2.22. In such cases, the court must hold a permanency planning hearing no later than 30 days after it finds that "reasonable efforts" to reunify the family are not required. The court's options following a permanency planning hearing are set forth in Sections 17.1 and 17.5. For a description of all permanency options, see FIA *Services Manual,* CFF 722-7. Federal law and regulation require the agency to file or join in filing a petition requesting termination of parental rights in certain circumstances. See Section 17.6.

CHAPTER 17

Permanency Planning Hearings

17.3 Time Requirements

Effective December 28, 2004, 2004 PA 473 amended MCL 712A.19a and 2004 PA 476 amended MCL 712A.19c. After the April 2004 update to page 362, insert the following text.

Statutory time requirements. Except as provided in MCL 712A.19a(2), a permanency planning hearing must be held within 12 months after the child was removed from his or her home. MCL 712A.19a(1) and MCL 712A.19c(1). A permanency planning hearing shall not be canceled or delayed beyond 12 months, regardless of whether there is a petition for termination of parental rights or any other matter pending. *Id.*

Replace the last paragraph on page 362 and all of the text on page 363 with the following text:

Circumstances requiring a permanency planning hearing within 28 days after adjudication. MCR 3.976(B)(1) requires a court to conduct a permanency planning hearing within 28 days after a petition has been adjudicated if the parent's rights to another child were terminated involuntarily, or if a parent has been found to have abused a child or a child's sibling and the abuse included one or more of the circumstances listed in MCL 712A.19a(2). MCL 712A.19a(2) states:

> "(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:
>
> (a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.*
>
> (b) The parent has been convicted of 1 or more of the following:
>
> (*i*) Murder of another child of the parent.
>
> (*ii*) Voluntary manslaughter of another child of the parent.
>
> (*iii*) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of

*See Section 2.22 for a discussion of these statutory provisions.

another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(*iv*) A felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to the child's siblings involuntarily terminated."

Note: The court rule requires the permanency planning hearing to be held within 28 days of the adjudication while the statute requires the permanency planning hearing to be held within 30 days of the court's finding that reasonable efforts to reunite the child and family are not required.

*As amended by 2004 PA 477.

Review hearings following a permanency planning hearing. Except as explained in the next paragraph, the court must conduct a review hearing not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home, the court must hold a review hearing not more than 182 days from the immediately preceding review hearing and no later than 182 days from each preceding review hearing thereafter until the case is dismissed. MCL 712A.19(3).*

*As amended by 2004 PA 477.

If a child is under the care and supervision of an agency and is in a "permanent foster family agreement" or is placed with a relative in a placement intended to be permanent, the court must hold review hearings not more than 182 days after the child has been removed from his or her home and no later than every 182 days thereafter, as long as the child remains subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency. MCL 712A.19(4).*

A review hearing shall not be canceled or delayed beyond the 182 days, regardless of whether a petition to terminate parental rights or another matter is pending. MCL 712A.19(3)–(4).

*As amended by 2004 PA 473 and 476.

Subsequent permanency planning hearings. As long as a child is in foster care, subsequent permanency planning hearings must be held no later than 12 months after each preceding permanency planning hearing. MCL 712A.19a(1) and MCL 712A.19c(1).* A permanency planning hearing shall not be canceled or delayed beyond 12 months, or beyond 30 days if the court has determined that efforts to reunite the child and family are not required, regardless of whether there is a petition for termination of parental rights or any other matter pending. *Id.*

Combined permanency planning and review hearings. A permanency planning hearing may be combined with a dispositional review hearing if

proper notice of the permanency planning hearing is provided and the court adheres to the time lines for permanency planning and review hearings. MCL 712A.19a(1) and MCL 712A.19c(1).

CHAPTER 17

Permanency Planning Hearings

17.5 Court's Options Following Permanency Planning Hearings

Replace the first sentence after the quote of MCR 3.976(E)(3) near the top of page 369 with the following text:

Effective December 28, 2004, 2004 PA 473 amended MCL 712A.19a. MCL 712A.19a(7) contains substantially similar language to MCR 3.976(E)(3). However, MCL 712A.19a(7)(b) provides that the court may place a child in foster care on a long-term basis if it is in the child's best interest *based upon compelling reasons*. MCR 3.976(E)(3) does not contain the compelling reasons requirement.

CHAPTER 19

Post-Termination Review Hearings

19.1 Purpose of and Time Requirements for Post-Termination Review Hearings

Effective December 28, 2004, 2004 PA 476 amended MCL 712a.19c. This statute now applies when a child remains in a "placement" (rather than "foster care") following termination of parental rights. The amendments also impose new time requirements for post-termination review and permanency planning hearings. On pages 421 and 422, replace the quote of MCL 712A.19c with the following:

> "(1) Except as provided in section 19(4)* and subject to subsection (2), if a child remains in placement following the termination of parental rights to the child, the court shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement for more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court's discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months from the date that the child was originally removed from the home. Subsequent permanency planning hearings shall be held within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be canceled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:
>
> (a) The appropriateness of the permanency planning goal for the child.
>
> (b) The appropriateness of the child's placement.

*§19(4) contains time requirements for review hearings when a child is subject to a "permanent foster family agreement" or is placed with a relative in a placement intended to be permanent. See Section 16.1.

(c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

"(2) This section applies only to a child's case in which parental rights to the child were either terminated as the result of a proceeding under section 2(b) of this chapter or a similar law of another state or terminated voluntarily following the initiation of a proceeding under section 2(b) of this chapter or a similar law of another state. This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency."

CHAPTER 19

Post-Termination Review Hearings

19.4 Termination of Jurisdiction

Continuation of a child's placement.

Replace the last sentence of the last full paragraph on page 424 with the following text:

If parental rights have been terminated, the court must continue to review the case while a child is in placement or under the jurisdiction, supervision, or control of the Michigan Children's Institute. MCL 712A.19c(1)–(2) and MCR 3.978(C).